IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 5630 of 2005

Between:

Syed Moosa Ali Hashmi S/o. Syed Durab Ali Hashmi
R/o. Himayatnagar, Hyderabad.

..... PETITIONER

AND

1 The Transmission Corporation of A.P. Ltd., Rep. by its Chairman and Managing Director,
Vidyut Soudha, Somajiguda, Hyderabad.
2 The Director (HRD & Projects) Transmission Corporation of AP Ltd.,
Vidyut Soudha, Somajiguda, Hyderabad.
3 The Central Power Distribution Company of AP Ltd., Rep,. by its Accounts Officer/Expenditure(Operation)
R.R. Circle/South, Singareni Bhavan, Red Hills, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ or order or direction, especially one in the nature of Writ of Mandamus i) declaring the impugned Memo. CGM (HRD & TRG/DE(DC)/1007-02/1990-40, dt. 28-1-2005 issued by the 2nd respondent and consequential Lr.No. SE/OP/RRC/5/AO/Expr/PAS/D.No. 546 dt. 17-2-2005 issued by the 3rd respondent as illegal arbitrary and set side the same. ii) consequently direct the respondents to treat the period from 15-4-1981 to 30-11-1993 as on duty and fix all the terminal benefits of the petitioner duly granting all other consequential benefits such as prayed for release of actual wages from 15-4-81 and all other benefits.

Counsel for the Petitioner:MR.K.VASUDEVA REDDY

Counsel for the Respondent No.: MR.KISHORE SAMINENI (SC FOR AP TRANSCO)

The Court made the following :

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O R D E R:

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1) This writ petition is filed by the petitioner aggrieved by the impugned order passed by 2nd respondent dated 28.01.2005, under which, the 2nd respondent treated him as deemed to have been resigned from the service in terms of Regulation 28(3) of Service Regulations.

2) The contention of the petitioner is that Regulation 28(3) of the Regulations was held to be bad. Therefore, it is not possible for the respondents to resort to the said regulation and claim that he is deemed to have resigned from service and ceased to be an employee of the respondents. The said order is illegal and unsustainable. Therefore, the impugned order is liable to be set aside.

3) The learned Standing Counsel for the respondents stated that Regulation 28(3) was held to be bad, but, however, contended that the petitioner did not co-operate with the respondents in conducting the enquiry and completing the same. In fact, according to respondents, the petitioner was away from the Country and he was employed elsewhere. Therefore, no indulgence can be shown in favour of the petitioner.

4) Heard both sides.

5) This writ petition is liable to be allowed simply on the ground that the order, dated 28.01.2005 was passed on the deemed ground of resignation of the petitioner from the service in terms of Regulation 28(3) of the Regulations. When once Regulation 28(3) is not part of Regulations, the respondents are not entitled to invoke the said provision to pass the impugned order.

6) Accordingly, the impugned order is set aside. However, it is open for the respondents to pass appropriate orders and take appropriate action against the petitioner in accordance with law.

7) The writ petition is accordingly allowed. No costs.

S.ANANDA REDDY J.,

Dt. 04.07.2005

c.c. in one week

B/o

tjs

To

1 The Transmission Corporation of A.P. Ltd., Rep. by its Chairman and Managing Director, Vidyut Soudha, Somajiguda, Hyderabad.
2 The Director (HRD & Projects) Transmission Corporation of AP Ltd., Vidyut Soudha, Somajiguda, Hyderabad.
3 The Central Power Distribution Company of AP Ltd., Rep,. by its Accounts

Officer/Expenditure(Operation) R.R. Circle/South, Singareni Bhavan, Red Hills, Hyderabad.

4 2 CD copies

5 1 CC to MR.VASUDEVA REDDY